

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FILED**2009 AUG -4 PM 12: 56**CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY
DEPUTY

**HITUL GANDHI, Individually and on
behalf of a class of others similarly
situated
Plaintiff,**

VS.

**DELL, INC., and DELL MARKETING
USA, L.P.
Defendants**

**CATHERINE L. DAVIS and TOMMY
MOORE, Individually and on Behalf of
Others similarly situated**

VS.

**DELL, INC. d/b/a DELL COMPUTER,
INC., a Delaware corporation, DELL USA
L.P., a Texas Limited Partnership and
DELL MARKETING L.P., a Texas
Limited Partnership
Defendants**

CAUSE NO. A-08-CA-248 JRN

**CAUSE NO. A-08-CA- JRN
(Consolidated)**

ORDER

Before the Court in the above-entitled and styled cause of action is Plaintiff Hitul Gandhi's (hereinafter "Plaintiff") Motion to Certify Class (Clerk's Dkt. No. 59); Defendant Dell, Inc.'s (hereinafter "Defendant") Response in Opposition to Plaintiff's Motion to Certify Class (Clerk's Dkt. No. 67); and Plaintiff's Reply in Response to Defendant's Opposition (Clerk's Dkt. No. 69). This case was referred to Magistrate Judge Austin for Report and Recommendation on April 8, 2009. After a careful and thorough review of the case and applicable law, the Magistrate Judge has recommended that Plaintiff's Motion to Certify Class be granted in part and denied in part (Clerk's Dkt. No. 59).

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of a

Magistrate Judge within ten (10) days after being served with a copy of the Report and Recommendation, and thereby secure a *de novo* review by the district court. A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except on grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). The Court received Defendant's Objections to the Magistrate's Report and Recommendation on July 16, 2009 (Clerk's Dkt. No. 107). After completing a *de novo* review of the applicable record, the Court overrules the Defendant's objections and accepts the Report and Recommendation of the Magistrate Judge for the reasons stated therein.

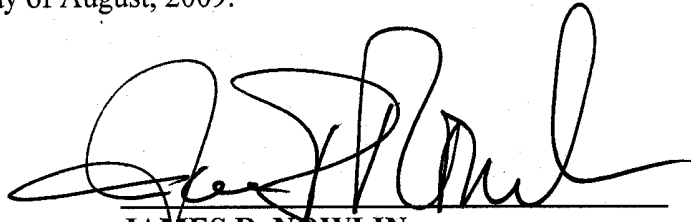
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Court hereby **ACCEPTS** the Report and Recommendation that the United States Magistrate Judge has filed in this cause.

ACCORDINGLY, IT IS FURTHER ORDERED that Plaintiff's Motion for Certification under 29 U.S.C. § 216(b) is **GRANTED** with regard to Plaintiff's allegations that Dell improperly classified business sales representatives as salaried nonexempt employees and improperly applied the fluctuating workweek method of payment; and with regard to Plaintiff's allegations that Dell does not pay business sales representatives for all work time.

IT IS FURTHER ORDERED that Plaintiff's Motion for Certification under 29 U.S.C. § 216(b) is **DENIED** with regard to Plaintiff's allegations that Dell's incentive policies are unlawful.

IT IS FURTHER ORDERED Plaintiff's Motion for Class Action Certification under FED. R. CIV. P. 23 IS **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED this 4th day of August, 2009.



JAMES R. NOWLIN
UNITED STATES DISTRICT JUDGE